

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Marty Mitchell,
Petitioner-Appellant,

v.

Warren County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-91-0663
Parcel No. 39490040080

On April 29, 2010, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Marty Mitchell, requested this appeal be considered without hearing. He was self-represented. County Attorney Bryan Tingle is legal representative for the Board of Review. Neither party submitted documentary evidence in addition to those in the Board of Review certified record. The Appeal Board now having examined the entire record, and being fully advised, finds:

Findings of Fact

Marty Mitchell, owner of property located at 1220 Lyle Murphy Drive, Carlisle, Iowa, appeals from the Warren County Board of Review decision reassessing his property. According to the property record card, the subject property consists of a one-story dwelling having 1450 square feet of living area on the main level and 410 square feet of living quarters over the garage, totaling 1860 square feet of living area. The dwelling has a 1450 square-foot basement with 925 square feet of finished area, and an attached 816 square foot three-car garage. The dwelling was built in 2006 and has a 3+00 quality grade. The dwelling is situated on a 0.269 acre site in the subdivision known as Randleman Ridge. The property was purchased by Mitchell for \$220,000 on April 16, 2009.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$273,400, representing \$34,600 in land value and \$238,800 in improvement value.

Mitchell protested to the Board of Review on the ground the assessment was not equitable as compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a); the property was assessed for more than authorized by law under section 441.37(1)(b); and there is an error in the assessment under section 441.37(1)(d). The specific error he claims is that the basement finish does not include floor covering or a toilet, and should not be counted as livable area. He claimed that \$225,000; allocated \$34,000 to land and \$191,000 to the dwelling was the actual value and a fair assessment of the property. The Board of Review granted the protest, in part, and reduced the assessment to \$249,900, allocated \$34,600 to land value and \$214,900 to dwelling value.

Mitchell filed his appeal with this Board and claimed the property was over-assessed and there was an error in the assessment. Mitchell purchased the property from Community State Bank for \$220,000 in April 2009. We note Mitchell believes the assessment should be \$225,000, which falls between the purchase price and his appraised value.

Mark Cubit of Cubit Appraisal Resources, LC, Johnston, completed an appraisal of the property for Bankers Trust Company for financing purposes. His final estimate of value for the subject property was \$230,000 as of April 3, 2009. Cubit developed the sales approach using three comparable sales. Although he reported nine comparable sales within the past twelve months in the subject's neighborhood, he used one sale from 2003 in his appraisal. He used the 2003 sale because of the size of the community and the limited number of new or newer homes in the subject's price range. The properties were adjusted for construction quality, age, living area, basement size and finish, garage size, and other amenities. Net adjustments ranged from 1.4% to 9.4%. Adjusted sales prices ranged from \$110.39 to \$154.15 per square foot with a median of \$133.14 per square foot. The subject property sold for \$220,000 or \$118.28 per square foot. Cubit indicates a prior sale of the subject in

2008 was a foreclosure from the builder to a bank. He indicated a slight influence of foreclosure sales and short sales in the market in this price range but opined the influence is not prevalent. He reports that these distress sale properties appear to have experienced limited days on the market as lenders are discounting the properties to expedite reducing their inventory. Cubit's indicated value by the sales approach was \$230,000.

Cubit also developed the cost approach to valuation. He estimated a value of \$243,513 using *Marshall Swift Residential Cost Handbook*. In his cost approach, he allocated \$36,000 to land value. He noted that approach was only developed to support his opinion of the property's market value.

The Board of Review record included two exhibits using sales of comparable properties they selected and those Mitchell selected. The Board of Review used the total sales price of each property and subtracted the assessed value of the land portion to estimate the dwelling only value. This method assumes the assessed value of the land is its fair market value. The Board of Review comparables had sales prices of only the dwellings ranging from \$113.11 to \$127.23 per square foot. Mitchell's comparables show sales prices of only the dwellings ranging from \$83.89 to \$116.20. Mitchell's dwelling was purchased at \$99.68 per square foot. But it was not likely a normal, arms' length transaction because it was purchased from a bank, not a willing seller. Iowa Code § 441.21(1)(b).

Reviewing all the evidence, we find that substantial evidence to support Mitchell's claim his property is assessed for more than authorized by law. Insufficient evidence was presented to show an error in his assessment. We find Cubit's appraisal of the subject property provides credible evidence of the fair market value of the subject property as of January 1, 2009. While the sale price of a property in a normal sales transaction can be considered in determining its fair market value, abnormal sales such as the subject properties' sale by a lending institution which received the property as a result of foreclosure requires adjustment. Since Mitchell's purchase price could have been influenced by the

abnormal sales history of the subject property, while it may be an indicator of value, we give more weight to the valuation determined in the Cubit appraisal.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the

correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

In *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996), the Court determined that, “It is clear from the wording of Iowa Code section 441.21(1)(b) that the sales price of the subject property in a normal sales transaction, just as the sale price of comparable property, is to be considered in arriving at market value but does not conclusively establish that value.” We are mindful of the fact that foreclosure sales are not considered normal transactions and require either exclusion or adequate adjustments to be used as comparative sales. *See* Iowa Code §441.21(1)(b). The purchase of the subject property from a lender when it had previously been in a foreclosure sale also makes the sale questionable because arms length transactions require “willing buyers and willing sellers.” We determine that the Cubit appraisal, which recognized the abnormal purchase conditions and adequately adjusted for them in his indicated value, supports the claim that the property is over-assessed. Further, we rely on his appraisal as the most credible evidence of the subject property’s fair market value as of the assessment date.


Mitchell alleges an error in his assessment under section 441.37(1)(d). Section 441.37(1)(d) is not limited solely to clerical or mathematical errors. The administrative rule interpreting this section indicates that the error may be more than what is alleged by the Board of Review. While “[a]n error in the assessment *would most probably* involve erroneous mathematical computations or errors in listing the property[,] [t]he improper classification of property also constitutes an error in the assessment.” Iowa Administrative r. 701-71.20(4)(b)(4) (emphasis added). This language suggests that other errors may constitute grounds for appeal pursuant to section 441.37(1)(d). Mitchell failed to present persuasive evidence to support his claim that an error exists in the subject property’s assessment.

Viewing the evidence as a whole, we determine a preponderance of the evidence supports Mitchell’s claim the property was over-assessed as of January 1, 2009. We, therefore, modify the

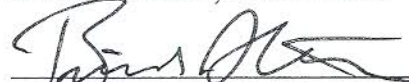
Mitchell property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$230,000, representing \$34,600 in land value and \$195,400 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Warren County Board of Review is modified to \$230,000, representing \$34,600 in land value and \$195,400 in dwelling value.

Dated this 18 day of May 2010.


Jacqueline Rypma, Presiding Officer


Karen Oberman, Board Chair


Richard Stradley, Board Member

Copies to:
Marty Mitchell
1220 Lyle Murphy Drive
Carlisle, IA 50047
APPELLANT

Bryan Tingle
301 North Buxton
Suite #301
Indianola, IA 50125
ATTORNEY FOR APPELLEE

Traci VanderLinden
Warren County Auditor
301 N. Buxton, Ste 101
Indianola, IA 50125

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-18</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	